Court, U.S.
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NO. 95-555

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERN 1995

MATTHEW E. JACKSON, JR.
Petitioner,
v.

OFFICE OF DISCIPLINARY COUNSEL,
Respondent.

PETITION FOR WRIT OF CERTIORARI
Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

Matthew E. Jackson, Jr., Esquire
Two Gateway Center, Suite 1305
Pittsburgh, Pennsylvania 15222
(412) 391-1700

QUESTIONS PRESENTED

I. Whether State Officials acted for impermissible reason by suspending attorney's license for exercising a Constitutional right?

II. Whether State Officials violated due process requirements by bringing charges under the pretext of a lawful motive?

LIST OF PARTIES

MATTHEW E. JACKSON, JR.

OFFICE OF DISCIPLINARY COUNSEL

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

No opinions were officially or unofficially reported in this case by any court or administrative agency. The Pennsylvania Supreme Court entered an order summarily affirming, without comment or analysis, the report and recommendation of the Disciplinary Board of Pennsylvania. App. at a1, a2.

STATEMENT OF JURISDICTION

The judgment of the Pennsylvania Supreme Court sought to be reviewed herein was entered on August 31, 1995. The statutory provision believed to confer on the Supreme Court jurisdiction to review the judgment of the Pennsylvania Supreme Court is Title 28 U.S.C. #1257.

STATUTORY PROVISIONS INVOLVED

The statutory provision involved in this case is Title 28 U.S.C.A. Const. Amends. 1, 14. The First Amendment to the United States Constitution provides: "*Congress shall make no law . . . abridging the freedom of speech . . .* " The Fourteenth Amendment provides: ". . . *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

STATEMENT OF THE CASE

Matthew E. Jackson, Jr. is an African American attorney who was admitted to practice in Pennsylvania in 1974. Jackson is a private practitioner in Pittsburgh, Pennsylvania. Beginning in 1988, Jackson represented Charles Gavin of 851 Linden Street, Donora, Pennsylvania. Jackson represented Gavin in many matters. The final matter was

a worker's compensation case in Washington, Pennsylvania. Washington is about 50 miles from Pittsburgh. The case involved Gavin being docked, after missing two days of work for a minor eye injury. It became protracted into seven hearings, several depositions of doctors and others, spanning thirteen months beginning May 11, 1989 and ending July 16, 1990. On March 30, 1990, the referee sent a notice for the final May 4, 1990 hearing, stating: ". . . NO FURTHER CONTINUANCES WILL BE GRANTED. THE CASE WILL BE DECIDED ON THE BASIS OF THE RECORD AS OF THE DATE OF THE LAST HEARING." Charles Gavin v. PPG Works #25, No. 148-36-6865, [Bureau of Worker's Compensation](July 16, 1990)

Mark G. Weitzman is an attorney who works in the Pittsburgh, Pennsylvania Office of Disciplinary Counsel. Weitzman, who was aware of Gavin's May 4, 1990 hearing, issued a subpoena for Jackson to appear at a disciplinary hearing in Pittsburgh on May 4, 1990. Weitzman detained Jackson at his hearing, knowingly causing Jackson to miss Gavin's May 4, 1990 hearing. Gavin attended the May 4, 1990 worker's compensation hearing without Jackson. Jackson v. Supreme Court of Pa, 30 F.3d. 1486, 130 L.Ed.2d 1067 (1995)(3rd Cir. App. at 388.)

On July 16, 1990, the referee sent an order that Jackson won Gavin's worker's compensation case. The referee ordered the defendant, PPG Industries, to pay Gavin's costs, which included the $150.00 for Hunt's transcript. Gavin v. PPG Works #25, supra.

On August 7, 1990, Jackson sent Gavin a final invoice, itemized from June 1988 when the professional relationship began. Gavin owed an outstanding balance of $8,343.03 in fees, costs and expenses. Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 525.)

Gavin, believing that Disciplinary Counsel would harass and intimidate Jackson into discharging his unpaid legal bill, filed disciplinary charges. Gavin was also the catalyst for two more disciplinary complaints from his friends Robert Lear and Alvin Teets, both of whom he sent to Jackson as clients. Weitzman handled all of these disciplinary complaints. Gavin's other diversion was suing Jackson. In 1991, he and Lear filed a pro se class action lawsuit against Jackson, professing to represent all of Jackson's clients. Their complaint alleged that Jackson committed disciplinary violations, as told to them by Weitzman. On October 25, 1991, the court struck the class action. Id (3rd Cir. App. at 354-372.) Lear and Gavin v. Jackson, No. G.D. 91-08066, in the Court of Common Pleas of Allegheny County, Pa.

In October 1991, the Disciplinary Board (hereinafter referred to as "Board") held a formal disciplinary hearing on another of Weitzman's petitions for discipline filed for William and Charlotte Rawlings. At the hearing, the hearing panel dismissed the charge. As Jackson left the hearing, Weitzman served Jackson with a petition for discipline for Gavin's friend, Lear. Id (3rd Cir. App. at 309-332.)

When the court struck Gavin's and Lear's class action, Weitzman set up an "investigatory hearing" for Gavin's disciplinary complaint. He subpoenaed Jackson's escrow account records for $150.00 paid by Gavin to Jackson, on July 12, 1989, for a transcript from a court reporter, named Judith Hunt. Since there was no disciplinary rule requiring that the $150.00 be escrowed, Jackson gave Weitzman a copy of the invoice to Gavin, dated August 7, 1990, canceled checks, receipts, copies of the referee's order for costs, dated July 16, 1990, and a copy of the September 9, 1990 disbursement of the $150.00. Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 389)

On January 23, 1992, Jackson sued the Supreme Court of Pennsylvania, Disciplinary Board of Pennsylvania, Office of Disciplinary Counsel, Robert Davis and Mark Weitzman. Robert Davis was the Acting Disciplinary Counsel who approved the disciplinary charges brought by Weitzman. Jackson alleged that Weitzman, beginning in 1987, had subjected him to numerous baseless disciplinary prosecutions, constructively destroying the value of his license to practice law. Weitzman's constant harassment and five incomprehensible formal disciplinary proceedings against Jackson that were eventually dismissed, underscored those abuses. The lawsuit sought monetary damages and declaratory and injunctive relief, pursuant to 42 U.S.C. #1981, 42 U.S.C. #1983, 42 U.S.C. #1985, 42 U.S.C. #1988 and 42 U.S.C. 2000a-1, et seq. Id

In February 1992, Gavin and Lear sued Jackson again. Gavin alleged fraud, malpractice and emotional distress. He again made numerous scandalous statements, about disciplinary rule violations. The court ordered Gavin to amend his complaint to allege a cause of action. Lear and Gavin v. Jackson, supra.

In March 1992, Disciplinary Counsel told Jackson to report for an "informal admonishment" on the complaint filed by Gavin's friend, Teets. Based upon Teets' telephone bills, showing 14 calls to Jackson's office in 14 months, the Board concluded that Jackson failed to return 14 telephone calls to Teets. Jackson did not receive prior notice of the proposed discipline, despite the Board's false statement in its "findings of fact." App. at 12.

On April 7, 1992, Gavin filed a second amended complaint in his lawsuit against Jackson. He alleged, inter alia, that Jackson ordered excess copies of a 2000 page transcript, needed for an appendix in Gavin's appeal to the Third

Circuit Court of Appeals of a 21 day trial where 10 copies were required for filing, and "shamelessly passed the cost on to the Plaintiff" [paragraph 6] and that Jackson collected $150 for a transcript in a workman's compensation case and "by neglect or design failed to pay the stenographer" [paragraph 7]. The court told Gavin to amend this complaint, specifying Jackson's alleged fraud, malpractice and infliction of emotional distress. Gavin v. Jackson, supra at G.D. 91-08066.

In April 1992, the Lear disciplinary charges were presented to a hearing committee. Weitzman failed to present any evidence, supporting any of the numerous allegations in his petition for discipline. Of note is that Weitzman used Dennis Kistler, Esquire, the husband of Weitzman's coworker, Helen Kistler, Esquire, as his expert witness. Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 390-394)

On July 2, 1992, Magistrate-judge Benson recommended dismissal of Jackson's claims against the Pennsylvania Supreme Court, the Board and Disciplinary Counsel because of immunity. The case continued against Weitzman and Davis, under a theory of malicious prosecution pursuant to 42 USC #1983. On August 10, 1992, the district court adopted those recommendations. Id

Gavin filed a third amended complaint. On August 13, 1992, the state court ordered Gavin's lawsuit, alleging fraud, malpractice and emotional distress against Jackson, dismissed with prejudice. Gavin appealed the Order to the Pennsylvania Superior Court. Gavin v. Jackson, No. G.D. 92-10729, in the Court of Common Pleas of Allegheny County, Pa.; Id (3rd Cir. app. at 369.) In November 1992, the Board dismissed Gavin's disciplinary complaint.

On July 23, 1993, the magistrate-judge, in recommending summary judgment, wrote, inter alia: that Jackson was "found to have violated disciplinary rules, and received discipline" in the Gavin and Lear cases. Jackson filed exceptions, alerting the court that the report, regarding the disposition of Gavin's and Lear's disciplinary complaints as presented to the court by defendants, was a patent falsehood. Both cases were, in fact, dismissed. Defendants made no effort to correct the misstatement in the "report and recommendation." Jackson v. Supreme Court, supra.

On July 26, 1993, three days after the magistrate-judge recommended summary judgment, Weitzman wrote to Jackson. He said that he had "just completed his investigation of the Judith Hunt complaint." He was forwarding his recommendation to a reviewing member. Jackson v. Disciplinary Board, Disciplinary Counsel and Weitzman, No. 0030 Misc. Docket 1994, petition at pages 2 and 20.

On August 23, 1993, the Superior Court of Pennsylvania affirmed the dismissal of Gavin's lawsuit, with prejudice. Gavin v. Jackson, No. 1459 PGH (Pa. Superior Court 1992.) On August 30, 1993, Magistrate-judge Benson amended his report [sua sponte], recommending that the court decline to decide the issue of probable cause in disciplinary proceedings. Jackson v. Supreme Court of Pa, supra.

Nothing further was heard from Disciplinary Counsel until September 27 to September 30, 1993 when Jackson received telephone messages from Mark Pastore, a process server for Disciplinary Counsel. The messages said that Pastore had papers to give to Jackson from the Supreme Court. When Jackson returned his call, on September 30, Pastore told Jackson that he had a petition for discipline in the "Gavin" case. Jackson v. Disciplinary Board, supra.

On October 1, 1993, Jackson picked up the petition for discipline. Although the Petition for Discipline does not identify the alleged complainant, it is, indeed, the Gavin case revisited. Weitzman and John Doherty, Chief Disciplinary Counsel, verified the petition. It alleged that Jackson ordered a transcript from a stenographer, Hunt. Jackson gave Gavin a receipt, dated July 12, 1989, saying: "Received $150.00 for transcript, Judith Hunt stenographer." The petition for discipline alleges violations of disciplinary rule 1.3, 8.4(c) and 1.15(b). It does not mention the July 16, 1990 order for defendant, PPG Industries, to pay Hunt's transcript fees; Jackson's August 7, 1990 final invoice to Gavin; or the September 9, 1990 disbursement of the $150.00 by PPG for Hunt's transcript.

On October 21, 1993, the Honorable Donald Zeigler entered summary judgment in Jackson v. Supreme Court of Pa, supra. Jackson appealed to the Third Circuit Court of Appeals.

The Board set the Gavin or Hunt hearing for December 18, 1993. The hearing panel consisted of James R. Reehl, chairperson, Lawrence M. Kelly and David Ridge. On December 17, 1993, the Board canceled the hearing, by telephone. Later, it rescheduled the hearing for March 18, 1994.

A client, Eric Salac, called Jackson, outraged after receiving a telephone call from a woman who identified herself as being an employee of Disciplinary Counsel. She was trying to solicit a disciplinary complaint about Jackson. Salac said that some of Jackson's other clients, whom he knew, also received calls from the woman. Jackson v. Disciplinary Board, supra.

Jackson prepared a Petition for Extraordinary Relief to be

filed with the Pennsylvania Supreme Court. The petition alleged that Jackson would not receive a fair and impartial hearing before the board because of demonstrated bias and prejudice, that the charges were brought in retaliation for Jackson's lawsuit against the Pennsylvania Supreme Court, Disciplinary Board, Disciplinary Counsel, Weitzman and Davis and that the disciplinary rules were being applied disparately.

On March 18, 1994, Jackson and his secretary, Gail Hill, tried to file the Petition for Extraordinary Relief. The Supreme Court Prothonotary in Pittsburgh refused to file it. She said to file it in Philadelphia. Jackson mailed the petition to the Prothonotary's office in Philadelphia, Pennsylvania. Before the hearing, Hill delivered a copy of the petition to the hearing committee along with a letter from Jackson stating that he filed the Petition for Extraordinary Relief. Id

On March 21, 1994, Disciplinary Counsel's investigator called Jackson's office. On March 22, 1994, the investigator came to Jackson's office and left his card twice. On March 23, 1994, he came to Jackson's home at 7:00 a.m. and served a letter. The letter was from Angelea Mitas, Esquire. Mitas is an attorney who works for the Pittsburgh, Pennsylvania Office of Disciplinary Counsel. Apparently, Disciplinary Counsel assigned her to handle the hearing for Weitzman. The letter said that Jackson had ten days to file the petition for extraordinary relief before the panel closed the record. Mitas sent two more of the same letter, one by regular mail and another by certified mail to Jackson's office.

On March 24, 1994, the prothonotary [Philadelphia] mailed the petition for extraordinary relief back to Jackson. The letter told Jackson that it had to be filed in Pittsburgh. On

March 27, 1994, Mitas sent Jackson a "personal and confidential" fax. It said that Jackson's failure to file the petition for extraordinary relief in the proper Prothonotary's Office did not alter the ten-days. On March 28, 1994, Disciplinary Counsel's investigator called. He came to Jackson's office twice, leaving his card. Mitas sent a "personal and confidential" letter. She sent the same letter by fax. Mitas sent a copy of another letter that she sent to the hearing committee, requesting that the record be closed.

On March 29, 1994, Disciplinary Counsel sent an investigator to Jackson's home at 8:00 a.m. He looked into Jackson's garage. He then parked across the street from Jackson's home for some time. They sent the same "personal and confidential" letter by mail. They sent another by fax.

Jackson amended the petition for extraordinary relief, describing the events since trying to file it on March 18, 1994. Jackson filed the petition for extraordinary relief on March 30, 1994. On that same day, James R. Reehl, the chair of the hearing panel sent an order, closing the record. Id

On May 23, 1994, Jackson received a letter from the prothonotary of the Supreme Court of Pennsylvania denying the Petition for Extraordinary Relief. Jackson also received a brief from Disciplinary Counsel. Disciplinary Counsel's brief showed that an ex parte hearing was held on March 18, 1994. Disciplinary Counsel's list of exhibits omitted the July 16, 1990 order for defendant, PPG Industries, to pay Hunt's transcript fees; Jackson's August 7, 1990 final invoice to Gavin; and the September 9, 1990 disbursement of the $150.00. No where in the brief was there any mention of any of the documents. In a brief, Jackson objected, bringing the omitted documents to the attention of the hearing

panel. Mitas wrote to the hearing panel, telling it to ignore the omissions. Id

On June 28, 1994, the Third Circuit Court of Appeals denied Jackson's appeal of the summary judgment entered in the case of Jackson v. Supreme Court of Pa, supra.

On September 8, 1994, the Hearing Panel filed its report. The report recommended that Jackson be found to have violated Rules of Professional Conduct 1.3, 8.4(c) and 1.15(b). It recommended public censure. Jackson filed exceptions to the hearing panel's recommendations and an affidavit setting forth a pattern of discriminatory acts. On October 24, 1994, Jackson filed a petition for a writ of certiorari to the United States Supreme Court in the case of Jackson v. Supreme Court of Pa, supra.

A Panel of the Board heard Oral Argument on the matter on December 15, 1994. The Panel consisted of Alfred Marroletti, Esquire, acting as Chair of the Panel, and Philip B. Friedman, Esquire, James J. Powell, Esquire and Robert J. Kerns, Esquire, Members of the Panel. App. at a2.

On February 21, 1995, the United States Supreme Court denied Jackson's petition for a writ of certiorari to the Third Circuit Court of Appeals. Id

On July 27, 1995, the Board recommended that Jackson be suspended from the practice of law for a period of one year and one day and be fined $1,084.21 in costs. The composition of the decision makers is confusing. There are four individuals listed as the Board's reviewing panel. One did not participate. There are two individuals listed as dissenters, but they are not listed as panel members. The majority was Alfred Marroletti, the chair, Philip B. Friedman and James J. Powell. Alfred Marroletti, member,

signed the "report and recommendation." Mr. Leonard and Mr. Saltz dissented and would recommend a public censure. Mr. Kerns did not participate in the decision. App. at a2.

On August 31, 1995, the Pennsylvania Supreme Court issued an order, summarily affirming the report and recommendation of the Board. It ordered that Jackson be suspended from the practice of law for a period of one year and one day, commencing in thirty days. Additionally, the court fined Jackson $1,084.21 in costs. App. at a1.

SUMMARY OF ARGUMENT

State officials who control licensing of attorneys bring charges against an attorney who sued them for violations of civil rights. The charges are a pretext. Their primary purpose is to retaliate against the attorney. They dig up an old fee dispute with a client who had unsuccessfully harassed and maliciously sued the attorney to avoid paying legal fees in excess of $8,000.00. They charge the attorney with fraud, over $150.00, and knowingly misrepresent facts in order to justify a finding of misconduct. The penalty is pre-planned as a public censure, but when the attorney questions their unlawful behavior, they exact an even more severe penalty, summarily suspending his license for one year and one day and fining him $1,084.21 in costs. These state officials acted in direct contravention of this Court's holdings in In Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977) and Pickering v. Board of Education, 391 U.S. 563, 885 S.Ct. 1731, 20 L.Ed.2d 811 (1968).

REASONS FOR GRANTING THE WRIT

A. Denial of Due Process

There has been a broad construction of the word "liberty" for purposes of due process so as to include the freedom to

engage in any of the common occupations of life. The right to earn a livelihood is protected by the Fourteenth Amendment of the Constitution of the United States. The State is subject to its "minimal demands." It is the very essence of the personal freedom and opportunities guaranteed by the constitution. Phillips v. Vandygriff, 711 F.2d. 1217 (5th Cir. 1983); Truax v. Raich, 239 U.S. 33 (1915); Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Stewart v. Hannon, 469 F.Supp. 1142 (N.D. Ill. 1979).

As soon as the magistrate-judge recommended summary judgment in Jackson v. Supreme Court of Pa., supra, Weitzman, the racial harasser, acted on a vendetta against Jackson for suing him. He had a conflict of interest. His self interest in the litigation meant that he could not exercise independent judgment. Weitzman lacked objectivity and the petition for discipline contained deliberate, material misrepresentations of facts. The Board and Disciplinary Counsel joined Weitzman in this vendetta, driven by a mob-like predisposition to maliciously injure Jackson. It is unlikely that Weitzman's coworkers called Jackson's client's, trying to solicit new disciplinary complaints, without authorization from their superiors. That meant that the Board was involved. Their self-interests violated the fundamental fairness requirement of the due process clause. The vast discretion vested in these individuals mandates that where a conflict of interest exists, the proceeding should be invalidated. To insure that their power is properly exercised, they must be held to the highest ethical standards. Comm. v. Dunlap, 377 A2d 975, 977 (1977); In re Ridgely, 48 Del. 464, 471, 106 A2d 527, 531 (1954)(analogous)

When Jackson tried to file the Petition for Extraordinary Relief, it became clear that the state's highest court condoned these malicious acts against Jackson. The games

played by the prothonotary, the hearing panel, Disciplinary Counsel, the Board and the Supreme Court, all participating, denied Jackson due process of law. An unconstitutional deprivation of a cause of action occurs when government officials thwart vindication of claim by violating basic principles that enable civil claimants to assert their rights effectively. Barrett v. U.S., 798 F.2d 565 (2d Cir. 1986)

For all intents and purposes, Jackson filed the for petition extraordinary relief in the Pennsylvania Supreme Court on March 18, 1994. Jackson did all that the law requires. While the law required the prothonotary to file and docket Jackson's petition, the prothonotary refused to accept Jackson' s petition when presented. Even if it were the wrong court, the prothonotary should have transferred it to the proper court to be treated as originally filed. However, it was the proper court and, on March 18, 1994, the prothonotary intentionally delayed filing and docketing of the petition. 42 Pa CSA #751; #2703. The petition for extraordinary relief had the effect of "transferring jurisdiction to the Supreme Court." When review is sought by a higher court, the government unit "may no longer proceed further in the matter." 42 Pa CSA #1702; #3309.

The Board distorted the truth, to support what it now expects the public to believe was a fair and impartial hearing. The opinion is evasive about Jackson's letter delivered on March 18, 1994. The truth is that the Board knew before the hearing that Jackson was seeking relief in the Pennsylvania Supreme Court, whether or not the Board considered the explanation valid. App. at a7, a9 and a10.

The hearing panel used Jackson's Petition for Extraordinary Relief to block Jackson from getting any hearing, nothwithstanding Jackson's concerns about getting a fair and

impartial hearing. It held an ex parte hearing, without jurisdiction. Disciplinary Counsel placed its case, in full, on the record. Afterwards, the chair placed a statement on the record that Jackson have ten days to file his Petition for Extraordinary Relief. This shows that hearing committee knew of the prothonotary's obstruction of the filing of the petition. It is doubtful if there was any point to reopening the record. The prejudice created by inadmissible evidence, improper interrogation of witnesses, manufactured testimony, consideration of matters outside the scope of the charges and the expense of the transcript, was practically insurmountable. Apparently the only purpose for the chair's statement, regarding the reopening of the record, was to create the appearance of a fair and impartial hearing.

That it was a pretense became even more apparent by the chair's behavior, after placing the "ten day" statement on the record. The opinion does not tell when and how Jackson received notice. The chair did not send Jackson an order regarding the ten days, through the mails, like courts normally conduct business. They waited three days, i.e., until March 21, 1995, before giving any notice and used the hearing panel's authority as a pretext to spend the next seven days harassing Jackson. Seven days after serving the ten day notice, Disciplinary Counsel told the hearing chair to close the record. The hearing chair knew how to immediately send out an order, closing the record.

There was an appearance of impropriety created by the Supreme Court of Pennsylvania and Disciplinary Counsel. Disciplinary Counsel knew about the ruling in time to write their brief and mail it on the same day that the prothonotary of the Supreme Court mailed the denial of the Petition for Extraordinary Relief. It was as if they were acting in concert and wanted Jackson to know that there was nothing Jackson could do about it. See Day v. Day, 12

Idaho 556, 86 P 531 (1906); Ex parte Ellis, 3 Okla Crim. 220, 105 P 184 (1909)(cause shall not be heard before a prejudiced court)

With respect to the occupations controlled by the government, the public has the right to expect officers to make adjudications on the basis of the merits. The first step towards insuring that these expectations are realized is to require adherence to the standards of due process; absolute and uncontrolled discretion invites abuse. Hornsby v. Allen, 326 F.2d 605 (CA 5 1964)

Jackson received a highly emotional, personal and vindictive decision. The Board was not concerned with fairness and impartiality. Serious issues are glossed over. The law is completely ignored. The board's lack of objectivity makes it virtually impossible for a reviewing court, looking at the hearing transcript, to determine if the Board acted out of bias, prejudice or other unlawful motive. Any issue involving credibility, such as Hunt being the recipient of an alleged promise from Jackson or Gavin's statements as to any specific agreement regarding the $150.00, should be viewed in light of the circumstances that were left out of the record.

The Board's bias went beyond the issues before them. The handling of Jackson's constitutional concerns is a frightening and shocking analysis which reaches an outrageous conclusion. The treatment of Jackson shows a sharp dichotomy and a need to erode the bases of institutional racism which condition bigoted attitudes and behaviors. The opinion discusses extrajudicial matters based on perceived facts justifying severe discipline. It reached these conclusions without notifying Jackson that they were considering the information. The exact nature of the information, the source of the information or how it reflects

upon Jackson's ability to represent clients is not revealed. It shows a conflict in values and attitudes, forming a crude hierarchy of what is of public importance. The Board recommended that Jackson be suspended for one year and one day and fined $1084.21 in costs and expenses.

Disciplinary Counsel's substitution of Mitas for Weitzman to handle the hearing was meaningless. The charges were still brought as a vendetta and Mitas continued to act on that vendetta. The disciplinary rules require lawyers to inform the tribunal of all material facts needed for an informed decision, even if the facts are adverse. This is specifically mandated in an ex parte proceeding. It is assumed those same rules apply to lawyers who work for Disciplinary Counsel. See Code of Professional Responsibility DR 1-102(A)(4)(5), D.R. 3.3; 42 Pa.C.S.A.; EC 7-26; Office of Disciplinary Counsel v. Grigsby, 493 Pa 194, 425 A2d 730 (1981) Disciplinary Counsel misrepresented the facts throughout these proceedings. Although the Board was aware of these misrepresentations, it ignores the issue. The deliberate concealment of evidence was a serious act of malfeasance that disregarded Jackson's rights. See e.g., U.S. v. Prentil, 764 F2d 548, 553 (9th Cir. 1985)

The petition for discipline does not allege who the complainant is. In November 1992, the Board dismissed Gavin's complaint. Rule 87.1 requires that "all matters involving alleged violations of the Disciplinary Rules" be disposed of at one time. They violated their own procedures, bringing charges without legal authority.

The Board's Findings of Fact fails to say who brought the charges. The opinion is confused about who is the alleged injured party. The petition for discipline does not allege any violations involving Gavin. The opinion held that

Jackson violated Rule 1.3 because Jackson ". . . neither paid for the transcript nor reimbursed the money to his client, from whom he received it . . ." In contrast, on June 8, 1992 Weitzman and John Doherty (Chief Disciplinary Counsel), in recommending dismissal of Gavin's disciplinary complaint, found "insufficient clear and convincing evidence to support a" violation of Rule 1.3. Rule 1.3 does not have anything to do with whether Jackson paid for the transcript or reimbursed Gavin. It applies to diligence in representing the client. Gavin, not Jackson, ordered the transcript from Hunt without Jackson's knowledge. Despite the evidence to the contrary and without any proffer of proof from Gavin or Hunt, the board found that Jackson ordered the transcript. There was no need for the transcript. The $150.00 was a payment on account which could only be used if needed for an appeal. The opinion does not discuss why the transcript was needed, before the conclusion of the hearings. From reading the opinion, one would never know that Jackson won this case for Gavin. The opinion does not say what better result Jackson could have achieved for Gavin. App. at a14; ee Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 369.)

The opinion ignores the issue of collateral estoppel. Gavin filed civil lawsuits that resolved the same issues, herein decided by the Board differently. That alone says that the disciplinary proceeding is malicious and that the decision, which is totally inconsistent with the law, is simply a means of retaliating. Jackson's final judgment on the merits against Gavin is binding "not only as to every matter which was offered and received to sustain or defeat the claim or demand." It should have put "an end to the matter. Commissioner v. Sunnen, 333 U.S. 591, 500 (1948).

Although the hearing was ex parte and there was no testimony from Jackson, the opinion calls Jackson a liar

without any specific reference. Jackson has never met any of these individuals and has never appeared before any Disciplinary panel or committee with regard to this case. Anyone reading the opinion would think otherwise. App. at a15.

The report and recommendation says: "In passing, it should be noted that Respondent did not attend that [Gavin's May 4, 1990] hearing." The Board conveniently fails to state, in creating its negative disciplinary record, that Jackson did not attend Gavin's May 4, 1990 Worker's Compensation hearing because of the Board. Weitzman knowingly kept him from Gavin's hearing on that day. Now, the Board, "in passing" says that Jackson did not attend Gavin's hearing-without saying that it was they who made certain that Jackson did not attend. Jackson v. Disciplinary Board, supra; Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 388.) App. at a11.

Disciplinary Rule 1.15(b) requires delivery of funds to third parties "to which they are entitled." The rule does not require that entitlement be determined by a member of the Board or a lawyer from Disciplinary Counsel. Nevertheless, the opinion frequently refers to Jackson's documents, as "irrelevant," "spurious" or otherwise insignificant. It does not explain what is meant by Jackson's "spurious defense" or refer to or identify any specific document. In truth, the Board did not allow Jackson to present any defense, let alone a "spurious" defense. See App. at a15. While the opinion belittles Jackson's documents, it neither discusses the issue or refers to legal authority supporting its conclusions. App. at a15.

The Board concludes: "Respondent's retention of the funds from July 12, 1989 to date, satisfies the Board that he has violated RPC 8.4(c) by engaging in conduct involving

dishonesty, fraud, deceit or misrepresentation." In other words, the opinion simply erases from existence the July 16, 1990 referee's order, for the defendant to pay for Hunt's transcript, to find fraud. In effect, Jackson was found guilty of fraud, deceit, dishonsety or misrepresentation for not paying a judgment that he got against someone else.

It is well established under Pennsylvania law that costs are the property of such persons for whose benefit they are primarily allowed and taxed. Hunt, the officer of court, is the actual owner of the costs to the extent of the fees due for her services. Gavin, the owner of the judgment being considered, at most, as a trustee for the officer who is the equitable and actual owners of the costs. 20 C.J.S. Costs, #141, #270; See Pittsburgh v. O'Brien, 239 Pa. 60, 66 (1913); Hoyshadt v. Delaware, L. & W.R.R., 182 F 880 (1902); Ranck v. Hill, 3 Pa. 123 (1846) see also Ellsbre v. Ellsbre, 28 Pa. 172 (1851); Howard Building Association v. Philadelphia & Reading Railroad 102 Pa. 220 (1883).

The opinion misstates that neither Gavin nor Hunt received the $150.00 when, in fact, Gavin received the $150.00. The opinion avoids any mention of the defendant, PPG's letter, dated September 1990, which forwarded the $150.00 due to Hunt for the transcript to Gavin, apparently at Gavin's insistence. Whatever occurred between Gavin and Hunt, Jackson was not privy to it. See Hoyshadt v. Delaware, L. & W.R.R., supra (defendant cannot discharge its liability to the officer by paying the plaintiff.); Ranck v. Hill, supra (Defendant pleaded payment and put in evidence a receipt in full from plaintiff. The court charged that plaintiff and defendant could not, without the consent of the officer to whom the costs belonged, discharge the defendant), see also Ellsbre v. Ellsbre, supra; Howard Building Association v. Philadelphia & Reading Railroad, supra. Jackson v. Supreme Court of Pa, supra, (3rd Cir. App. at 517.) If there

was an agreement between Gavin and Hunt that Jackson would pay Hunt $150.00, Hunt was no more than a third party beneficiary subject to the same conditions as Gavin. Perry v. Middle Atlantic Lumbermans Association, 542 A2d 72 (Pa Super 1988) citing cases; See also Contract Beneficiaries, 27 Yale Law Review, 1008, 1024.

The opinion misrepresents Jackson's accounting to Gavin. Gavin's worker's compensation case ended on July 16, 1990. Jackson gave Disciplinary Counsel a copy of his final invoice to Gavin, dated August 7, 1990, for its investigatory hearing held in November 1991. See Disciplinary Rule 1.15(c) which provides that property in which both the client and lawyer claim an interest be kept separate by the lawyer until an accounting occurs. This is not a subject for a disciplinary proceeding. In re Fraser, 523 P.2d 921, 927 (1974) See Annot., Disbarment for failure to account for money of client, 43 A.L.R. 54, 69-70 (1926). 7 C.J.S. Attorney & Client, #23 (3)(a)(1937) Jackson v. Supreme Court of Pa, supra., (3rd Cir. App. at 518-530.) Gavin owed Jackson fees, costs and expenses in excess of $8,000.00. See Selby v. Brown, 292 Pa. Super 463, 437 A2d 767 (1981)(Under DR5-103(B), court costs are ultimate responsibility of the client); See generally, Lynch, Ethical Rules in Flux: Advancing Costs of Litigation, 7 Litigation 19, 19 (1981); See also Milan, Miller, Berger, Brody & Miller, P.C. v. United States, 679 F. Supp. 692 (E.D. Mich. 1988)(litigation costs represent loans and not tax deductible expenses.) The expenses were properly charged back to Gavin. See Urban Court Reporting Inc. v. Davis, 551 N.Y. Supp. 2d 235 (App. Div. 1990); Disciplinary Rule 5-103(B) imposes an obligation upon the lawyer to recover costs and expenses from the client.

The due process clause of the fourteenth amendment prohibits the deprivation of liberty or property without

reasonable notice and the opportunity for some kind of hearing appropriate to the nature of the case. Board of Regents of State College v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) The Board suspended Jackson's license without proper notice that it was considering matters beyond the scope of the petition for discipline. Jackson did not receive a fair hearing, an opportunity to present evidence, cross examination or findings. Hornsby v. Allen, supra; Hoaf v. Board of County Commissioners, 337 F.Supp. 772 (Minn. 1971).

The opinion states the following: "Respondent chose instead to file a Petition for Extraordinary Relief alleging a "bad faith prosecution" with no evidence upon which to sustain such a claim and later filed an apparently groundless complaint in the United States District Court, which Complaint was dismissed by the Court." App. at a16.

The Board had no jurisdiction to consider anything alleged in Jackson's Petition for Extraordinary Relief, filed in the Pennsylvania Supreme Court. It is clear from the above statement that the Board's findings were tainted by personal animus resulting from Jackson's filing of his petition. They did not give Jackson notice that they were including it as part of their adjudication of Gavin's complaint or an opportunity for a fair and impartial hearing before they reached their conclusions. Since the Petition set forth misconduct on the part of the Board, it is clear that the Board's conclusion that "there is no evidence upon which to sustain such a claim" is biased and lacks impartiality.

It is unclear how the Board reached its conclusion that Jackson "filed an apparently groundless complaint in the United States District Court" after these proceedings commenced. There is absolutely no truth to the conclusion.

Evidently, the Board engaged in ex parte communications and relied upon biased and distorted statements. It shows the bias and hostility of the Board in deciding this case. The Board acted maliciously, carelessly and recklessly in reaching the conclusion.

Jackson raised the issue of denial of equal protection of the law in the application of rules for the professional practice of law in his petition for extraordinary relief. The decision of whether or not to prosecute and what charges to bring may not be deliberately based on the unjustifiable standard of race or other arbitrary classification involving the exercise of protected statutory rights. Wayte v. United States, 470 U.S. 598, 609 (1984) The Board simply denied its existence, saying it never happened. App. a13.

The Board's statement about Sullivan is a reference to a disciplinary complaint filed by Jackson, in 1984, against a white attorney named David Sullivan. Sullivan stole $3,000.00 from Jackson's personal bank account through electronic transfer. After a very brief "investigation," Disciplinary Counsel dismissed Jackson's complaint. The allegations against Sullivan showed conduct that was "violative of disciplinary rules." Disciplinary Counsel was "derelict in their duties" because they never "presented the matters to the board." See e.g. Jackson v. Supreme Court of Pa, supra. Disciplinary Counsel did not create a record of Jackson's complaint against Sullivan. They destroyed their records of that complaint, while the rules require that they maintain records of all complaints. Now, they hide behind the false statement that the allegations surrounding Sullivan do not show evidence of racism and politics.

The Board and Disciplinary Counsel have complete discretion to bring charges against attorneys. Investigations and proceedings are secret and attorneys do not have access

to their files. They have immunity from liability. There are no outside agencies which police their conduct. Neither has an African-American employee in any position of responsibility. Each of the 24 to 30 hearing panel members before whom Jackson has appeared, has been white. Every charge Weitzman has ever brought against Jackson involved distorted, fabricated or embellished information. Weitzman has not operated in a vacuum. His office, Disciplinary Counsel, has ratified his every act. They solicited disciplinary complaints from Jackson's clients. The Board routinely rubber-stamped Weitzman's recommendations. It has never investigated Jackson's allegations of racism, harassment and politics. The Board's attitude is that, no matter how blatant the behavior or irrational the logic or how despicable the conduct, Jackson must prove that it is racism, harassment and politics, knowing that all of the information needed for proof is in their possession.

In the instant case, Weitzman, using his unfettered discretion to retaliate. One proposed complainants, Judith Hunt, does not have legal standing to complain. A court of law had already decided who must pay the $150.00 she claimed Jackson should pay her. The other, Gavin, whom the Disciplinary Board coached and promised that he would not have to pay Jackson's fees, maliciously harassed Jackson in the state court and has been barred by the state court from bring his claims again. He stole over $8,000.00 in fees and expenses from Jackson. In any other business, Gavin would be looking at a jail term for theft of services and barratry. Here, the state court helped him commit crimes.

Why was the $3,000.00 that Sullivan stole from Jackson summarily dismissed, without any concern for Jackson's rights, while the $150.00, that is the subject of the Board's deception and perversion of the legal process, is "egregious

conduct?" The answer is very simple: racism and politics. But, just like the video tapes of the Rodney King beating and the audio tapes of Mark Fuhrman. What you are seeing is really not what you see. What you hear is really not what you are hearing. Regardless of how blatant the behavior, no matter how irrational the logic or how despicable the conduct, it has nothing to do with racism or politics. The official statement is always: These are "unsupported and scurrilous accusations" and there is no evidence, of any kind, "to even suggest that such accusations have any basis in fact." App. at a13.

The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. Baird v. State Bar of Arizona, 401 U.S. 1, 8 (1971) The sanctions involved in disciplinary proceedings can amount to loss of livelihood and professional reputation. See Erdmann v. Stevens, supra, 458 F.2d at 1209-10. The Board severely punished Jackson, summarily taking away his livelihood. The Board has made no showing that a predriprivation hearing was impractible or impossible, which it obviously was not. Freeman v. Blair, supra. They did not give Jackson time to wrap up his business. There was little time to challenge their actions or find new employment. These are such drastic consequences for the individual attorney that the State's power to divest one of a license to practice law may not abrogate federally protected rights. Mildner v. Gulotta, 405 F. Supp. 182, 192 (1975); Cf. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 736, 42 L.Ed.2d 725 (1975)

The Board acted maliciously. The circumstances of the suspension so blackened Jackson's name as to impair his liberty interest in his professional reputation. The public received a negative impression of Jackson's abilities and performance. The statements in the opinion are defamatory. This case has nothing to do with whether

Jackson is "an unfit and reckless practitioner from whom the public deserves protection." App at a__.

Jackson received no notice that the Board was considering what they vaguely describe as "reckless and careless" practicing of law or activities "from which the public deserves protection." There is absolutely no factual basis for the Board's conclusion that Jackson is not morally and professionally fit to continue as a member of the legal profession. The opinion is intended to mislead the public as to the true reason for Jackson's suspension from practice. The truth is that the only thing that Jackson did was file a lawsuit against the Pennsylvania Supreme Court, the Disciplinary Board, Disciplinary Counsel, Robert Davis and Mark G. Weitzman, for violations of Jackson's civil rights.

The liberty interest that is protected by the procedural guarantees of the Fourteenth Amendment arises when a person's legal status under state law is altered, and that alteration is combined with defamation. Guarino v. Larsen, 821 F.Supp. 1040 (E.D. Pa. 1993); The due process clause requires a hearing when the result "creates and disseminates a false and defamatory impression" in connection with the action. Codd v. Velger, 429 U.S. 624, 628 (1977)(per curiam). This principle was first announced in Board of Regents v. Roth, 408 U.S. 564 (1972).

The opinion's vague standards are not sufficiently specific to give any person, of ordinary intelligence, a reasonable opportunity to know what is prohibited so that he may act accordingly. Graymned v. Rockford, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). App. at a16. By slandering Jackson, they can protect themselves from scrutiny. The reason they want to "be confident at he meets the criteria" is simply to control whether Jackson seeks redress for wrongs they commit against Jackson. That

conclusion is nothing more than "delegation of policy for "resolution on an ad hoc and subjective basis." Graymned v. Rockford, supra. A State may not inquire about a man's views or associations solely for the purpose of withholding a right or benefit because of what he believes. Baird v. State Bar of Arizona, 401 U.S. 1, 8 (1971)

C. Freedom of Speech

The constitutionally permissible scope of state inquiry in making a determination of character and professional competence must be limited by the traditional high regard for freedom of speech. Moity v. Louisana State Bar Association, 414 F.Supp. 176, on remand 414 F.Supp. 180 (D.C. La. 1976)

This case is analogous to Pickering v. Board of Education, 391 U.S. 563, 885 S.Ct. 1731, 20 L.Ed.2d 811 (1968). No evidence was introduced at any point in the proceedings as to the effect of the publication of the letter on the community as a whole or on the administration of the school system in particular, and no specific findings along these lines were made. The court held, "To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocably rejected in numerous prior decisions of this Court. (citing cases). [T]he theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable has been uniformly rejected. Pickering v. Board of Education, supra at 1734.

In spite of the Court's cautions in Pickering v. Board of

Education, supra, the Disciplinary Board, in this case, retaliated against Jackson because he exercised a constitutional right. The opinion admits that it is retaliation. There was retaliation at every stage of the proceeding. The Board wrote, in its report and recommendation: "In this uncomplicated matter . . . he [Jackson] chose instead to literally, in the vernacular, "make a federal case out of it" thus denigrating . . . the entire disciplinary process to the detriment of all." App. at a16-a17.

The opinion refers to ". . . at least one baseless law suit in another forum," "filed an apparently groundless complaint, "chose to make a federal case out of it." App. at a15. The above statements are a reference to Jackson v. Supreme Court of Pa., supra. These charges were brought in retaliation for that lawsuit. When Jackson appealed to the Third Circuit Court of Appeals and, later, filed the Petition for a Writ of Certiorari to the United States Supreme Court, the Board decided to suspend Jackson from the practice of law, regardless of the merit to the suspension. That is why the punishment went from public censure to a one year and a day suspension.

The filing of a lawsuit carries significant constitutional protections implicating the First Amendment right to petition the Government for redress of grievances and the right of access to the courts. Hoeber for and on behalf of N.L.R.B. v. Local 30, United Slate, Tile & Composition Roofers, Damp and Waterproof Workers Ass. AFL-CIO, 939 F.2d 118 (3rd Cir. 1991) A person's constitutional right of access to the courts cannot be impaired by threats or harassment in retaliation for filing lawsuits. Zar v. South Dakota Board of Examiners of Psychologists, 976 F.2d 459 (1992) The test for determining a violation of First Amendment rights has never been whether or not the

speaker or petitioner was successful in delivering his message before he was penalized for speaking or petitioning. What is relevant is whether any burden on First Amendment freedoms, either in the form of a prior restraint or a sanction imposed to prohibit or to punish exercise of First Amendment rights. Bradley v. Pittsburgh Board of Education, 910 F.2d 1172, 1186 (3rd Cir. 1990)

Apparently, the Board expected Jackson to continue to passively accept harassment, racism and politics, as a privilege of practicing law. Jackson has the same right to practice law as they do. The law does not make the distinction that they seem to believe exists. If the state is allowed to intimidate and punish attorneys for filing a lawsuit, the attorney will be totally deprived of a remedy for an actual injury. The First Amendment guarantees the right to petition the court to redress grievances. California Motor Transport v. Trucking Unlimited, 404 U.S. 508, 510 (1972)

The right of freedom of speech and press includes the right to express one's attitudes or philosophies . . . [by] lawful means. Griswold v. Connecticut, 85 S.Ct. 1678, 1681 (1965) This Court has also indicated, in more general terms, that statements by public officials on matters of public concern must be accorded First Amendment protection despite the fact that the statements are directed at their nominal superiors. Garrison v. State of Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964); Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962). (In Garrison, the New York Times test was specifically applied to a case involving a criminal defamation conviction stemming from statements made by a district attorney about the judges before whom he regularly appeared.)

It is axiomatic that the government may not regulate speech

based on its substantive content or the message it conveys. Police Dept. of Chicago v. Mosley, 408 U.S. 92, 96, 92 S.Ct. 2286, 2290, 33 L.Ed.2d 212 (1972). Discrimination against speech because of its message is presumed to be unconstitutional. See Turner Broadcasting System, Inc. v. FCC, 512 U.S. ____, 114 S.Ct. 2445, 2458-2459, 129 L.Ed.2d 497 (1994) When the government targets not subject matter but particular views taken by speakers on the subject, the violation of the First Amendment is all the more blatant. See. R.A.V. v. St. Paul, 505 U.S. 377, 112 S.Ct. 2538, ____, 120 L.Ed.2d 305 (1992). The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction. See Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983).

The Board is in a position to coerce, intimidate and retaliate against attorneys. By severely punishing Jackson for engaging in a constitutionally protected activity, the Disciplinary Board placed all attorneys on notice. Anyone who sues them, is subjecting himself to the possibility of a burdensome task. No matter how malicious the Disciplinary Board's conduct, the attorney will incur substantial loss of income, reputation and expense in defending against it.

What is egregious is the Disciplinary Board, claiming to be the watchdogs of integrity and professionalism, functioning as a gestapo, withholding information, harassing an individual, distorting the truth, openly discriminating and altering the record to protect themselves from criticism. The denigration came, not from Jackson, but from the Board's own lack of integrity and its demonstrated inability to mete out discipline evenhandedly with the highest regard for truth, honesty and fair play. It was politically expedient to ruin an attorney's career, harm his family and destroy his

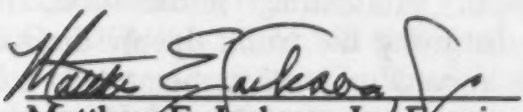
clientele. It is extremely unfortunate that these individuals, in their judgment, can couch their behavior in terms of what is good for the public. They have not taken their responsibility to the public seriously, nor opened their records so that the public might be able to evaluate the conduct of which they are not being informed.

It does not follow that objectively reasonable officials could have believed that the summary suspension of Jackson's license to practice law was also constitutionally permissible. Freeman v. Blair, 862 F.2d 1330 (8th Cir. 1988). The state must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum," Cornelius v. NAACP Legal Defense & Ed Fund, Inc., 473 U.S. 788, 804-806, 105 S.Ct. 3439, 3451, 87 L.Ed.2d 567 (1985) The law making retaliation for the exercise of a constitutional right unlawful was clearly established long before the events in this case, see Mt Healthy City Board of Education v. Doyle, supra, and objectively reasonable officials could not fail to know of it. Freeman v. Blair, supra.

CONCLUSION

For the reasons set forth above, Petitioner requests that the Court grant the petition for a Writ of Certiorari.

Respectfully submitted,



Matthew E. Jackson, Jr., Esquire
Two Gateway Center, 13W
Pittsburgh, Pennsylvania 15222
(412) 391-1700

IN THE SUPRREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, No. 143,
Disciplinary Docket

Petitioner

No. 3 - Supreme Court
v. No. 81 DB 93
Disciplinary Board

MATTHEW E. JACKSON, JR.,
Attorney Registration No. 20147

Respondent

(Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 31st day of August, 1995, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 7, 1995, it is hereby ORDERED that MATTHEW E. JACKSON, JR. be and he is SUSPENDED from the Bar of this Commonwealth for a period of One (1) year and One (1) day and he shall comply with all the provisions of Rule 217 Pa.R.D.E. It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E. Mr. Justice Montemuro is sitting by designation.

TRUE COPY FROM RECORD
Attest: August 31, 1995
Signed:_____
PATRICIA JOHNSON, Chief Clerk,
Supreme Court of Pennsylvania
eastern District

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, No. 81 DB 93

Petitioner

v. Attorney Registration No. 20147

MATTHEW E. JACKSON, JR., (Allegheny County)
Respondent

REPORT AND RECOMMENDATION OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule | 208(d)(2)(iii) ⁞of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with

respect to the above - captioned Petition for Discipline.

HISTORY OF PROCEEDINGS

On September 17, 1993 a Petition for Discipline was filed by Petitioner, Office of Disciplinary Counsel. No answer was filed within the prescribed time.

The matter was referred for disciplinary hearing to Hearing Committee 4.02 on November 1, 1993. The Committee consisted of James R. Reehl, Esquire, Chairperson, Lawrence M. Kelly, Esquire, and David Ridge, Esquire, Members.

On March 18, 1994 a disciplinary hearing was held. Respondent filed a Petition for Extraordinary Relief in the Supreme Court of Pennsylvania on March 30, 1994. Petitioner filed an Answer to Respondent's Petition on April 1, 1994.

On May 20, 1994 the Supreme Court of Pennsylvania denied by order Respondent's Petition for Extraordinary Relief.

Petitioner filed a Brief to the Hearing Committee on May 20, 1994, and Respondent filed his Brief to the Hearing Committee on June 30, 1994.

On September 8, 1994, the Hearing Committee filed its report, recommending that Respondent receive a Public Censure.

Petitioner filed a letter advising that no exceptions would be filed to the Report.

On October 11, 1994, Respondent filed a Brief on Exceptions to the Report of the Hearing Committee and under separate cover requested oral argument. Petitioner filed a Brief Opposing Exceptions on November 1, 1994, and Respondent filed a Reply Brief.

A Panel of the Disciplinary Board heard Oral Argument on the matter on December 15, 1994. The Panel consisted of Alfred Marroletti, Esquire, acting as Chair of the Panel, and Philip B. Friedman, Esquire, James J. Powell, Esquire and Robert J. Kerns, Esquire, Members of the Panel.

The matter was adjudicated at the December 16, 1994 meeting of the Disciplinary Board.

II. FINDINGS OF FACT

1. Petitioner, whose principal office is now located at Suite 400, Union Trust Building, 501 Grant Street, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter Pa.R.D.E.) with the power to investigate all disciplinary proceedings brought in accordance with the aforesaid Rules.

2. Respondent, Matthew E. Jackson, Jr., Esquire, was born in 1944, was admitted to practice law in the Commonwealth of Pennsylvania in 1974, and his office is located at Suited 1305W, Two Gateway Center, Pittsburgh, PA 15222. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent was retained by Charles Gavin to handle, among other matters, a workers' compensation claim that Mr. Gavin had filed against his employer in the Spring of 1989. (N.T. 36).1["N.T."refers to the Notes of Testimony taken at the disciplinary hearing held on March 18, 1994."P.E." refers to Petitioner's Exhibits admitted at the same hearing.]

4. As part of that representation, Respondent attended a hearing before a workers' compensation referee in Washington, PA on June 1, 1989. (N.T. 37, 68; PE-4).

5. At that hearing on June 1, 1989, Judith Hunt was the hearing stenographer. (N.T. 37, 68). At the conclusion of that hearing, Respondent requested that a copy of the transcript of that hearing be prepared. (N.T. 68-69).

6. Ms. Hunt prepared the transcript and sent it to Respondent, along with a bill for $153.00, on July 3, 1989. (N.T. 60-70; PE-6)

7. Upon his receipt of that transcript, Respondent advised Mr. Gavin of the amount due to Ms. Hunt for this transcript, and collected $150.00 in cash from Mr. Gavin to pay for this transcript on July 1, 1989. (N.T. 38-40; PE-1). Respondent advised Mr. Gavin that he would give the extra $3.00 to Ms. Hunt himself. (N.T. 38-39).

8. When Ms. Hunt did not receive payment for the transcript, she sent additional bills to Respondent for this transcript after three monts and "a month or two later", as was her normal practice when payment is not received following the first billing. (N.T. 72-73).

9. When Respondent still failed to pay this bill, Ms. Hunt sent a letter dated March 29, 1990 to Mr. Gavin, to advise him that this bill was still unpaid and to ask for his "prompt attention" to this matter. (N.T. 41-43, 73-74; PE-2).

10. Mr. Gavin did not question Respondent about this March 29, 1990 letter from Ms. Hunt at that time. (N.T. 44). However, at a referee's hearing on Mr. Gavin's workers' compensation claim on May 4, 1990, he did advise Ms. Hunt that he had already paid Respondent for the transcript, and he showed her a copy of his receipt from Respondent. (N.T. 45, 75).

11. After the hearing on May 4, 1990, Mr. Gavin went

to Respondent's Pittsburgh office to discuss the nonpayment of Ms. Hunt's bill. Because Respondent was unavailable on that date, Mr. Gavin left a copy of Ms. Hunt's letter for him, on which Mr. Gavin added a handwritten request for Respondent to forward the funds wwhich Mr. Gavin had given Respondent to pay for the June 1, 1989 transcript. (N.T. 47-48; PE-3).

12. Ms. Hunt also wrote a letter to Respondent, dated May 15, 1990, stating that she had been shown a receipt for payment by Mr. Gavin, and again requesting his "prompt attention" to the matter of payment. (N.T. 76-77; PE-9).

13. On or about May 17, 1990, Mr. Gavin met Respondent on the street and asked him to pay Ms. Hunt. Respondent called Ms. Hunt on the phone, in Mr. Gavin's presence, and promised her that he would pay the bill "as soon as possible." (N.T. 50-51, 78).

14. Despite this promise, Respondent did not pay Ms. Hunt for this transcript, and in fact, the bill remained unpaid as of the date of the disciplinary hearing. (N.T. 8) Respondent has never advised either Ms. Hunt or Mr. Gavin that he would not turn the money provided by Mr. Gavin over to Ms. Hunt. (N.T. 51-52, 80).5

15. Ms. Hunt sent additional statements to Respondent on June 29, 1990 (N.T. 78; PE-10) and on August 1, 1990 (N.T.79; PE-11), but Respondent never forwarded the money owed by her.

16. Respondent was properly served with notice of the March 18, 1994 disciplinary hearing before the Hearing Committee, including by personal service. (N.T. 7-8; 18-22; PE-13). Despite this notice, Respondent failed to attend the hearing, to request a continuance, or to offer a reason why he

failed to attend the hearing.

17. At 9:54 a.m. on March 18, 1984, Respondent caused a letter, addressed to "Hearing Committee 4.04", to be hand-delivered to the Office of Disciplinary Counsel, where the hearing in this matter was scheduled to be held beginning at 10:00 a.m. (PE-17) This letter did not request a continuance or provide a valid reason for Respondent's subsequent failure to attend the scheduled hearing.

18. Attached to Respondent's letter was a "Petition for Extraordinary Relief" which Respondent represented had been filed with the Supreme Court of Pennsylvania.2[In actuality, that Petition was apparently not accepted by the Prothonotary of the Supreme Court of Pennsylvania when an attempt was made to file it on March 18, 1994, and the Petition was not in fact filed until on or about March 30, 1994. See Respondent's Brief, at 6-7, and N.T.90.] That Petition requested, inter alia, that the Supreme Court "[e]njoin the imminent bad faith prosecution scheduled for March 18, 1994. (PE-15, at 25)

19. During the hearing, a number of attempts were made to contact Respondent at his Pittsburgh law office, and the Offices of Disciplinary Counsel were periodical%v chdcked to ensure that Respondent was not in fact waiting outside the hearing room. (N.T. 5, 27-29, 58-59, 85, 93-94). However, all attempts to locate or contact Respondent during the hearing were unsuccessful.

III CONCLUSIONS OF LAW

The Disciplinary Board concludes that Respondent has

violated the following Rules of Professional Conduct:

RPC 1.3 - by failing to act with reasonable diligence and promptness in representing a client.

RPC 1.5(b) - By failing to promptly notify the client or third person upon receipt of funds or other property in which the client or third person has an interest.

RPC 8.4(c) -Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

The matter before the Board began as a relatively minor incident and, were it not for the conduct of Respondent, could have been long since dispose of, probably in a manner more favorable to Respondent.

This case involves very simple and incontrovertible facts pertaining to receipt by Respondent of $150.00, in cash, from his Worker's Compensation client which was intended for payment of a stenographic bill in the sum of $153.00.

On March 18, 1994, a disciplinary hearing was held to inquire into Respondent's reason for not utilizing the $150.00 as directed by his client, i.e., payment of the stenographic bill

in the sum of $ 153.00 form July 12, 1989 until the above stated date of hearing.

Respondent, despite proper service and notice of the March 18, 1994 disciplinary hearing, failed to attend the hearing, failed to request a continuance and further failed to offer any reason why he did not attend the hearing. Instead of attending the hearing or requesting a continuance, Respondent prepared a "Petition for Extraordinary Relief" and sent a copy of same to the Hearing Committee representing that it had been filed with the Supreme Court of Pennsylvania. For reasons not pertinent herein, Respondent's Petition was not, in fact, accepted by the Prothonotary of the Supreme Court of Pennsylvania on March 18, 1994 and was not in fact filed until on or about March 30, 1994. That Petition, Docket NO. 0030 W.D. MISC. Docket 1994, was denied by the Supreme Court of Pennsylvania by Order dated May 20, 1994.

During the March 18, 1994 hearing, many attempts were made to contact Respondent at his Pittsburgh law office and the Offices of Disciplinary Counsel were checked periodically to insure that Respondent was not in fact waiting outside the hearing. All attempts to locate or contact Respondent during the hearing were unsuccessful.

The Hearing Committee proceeded to make a finding but, due to Respondent's failure to appear, decided to keep the record open for ten days, until March 28, 1994 to determine whether Respondent's Petition for Extraordinary Relief was, in fact, filed with the Supreme Court of Pennsylvania.

Respondent's Petition, as above stated, was not filed prior to March 28, 1994 and, therefore, the record was closed pursuant to the procedure announced by the Hearing Committee on March 18, 1994. Respondent was notified of the procedure to be followed in closing the record and took no action to delay or prevent the closing of the record on the stated date.

The undisputed evidence presented to the Hearing Committee established that Respondent's client, Charles Gavin, gave Respondent $150.00 in cash on July 12, 1989 to pay for the transcript of a hearing held on June 1, 1989 and prepared by Ms. Judith Hunt, the hearing stenographer.

Ms. Hunt testified that at the conclusion of that hearing Respondent requested that a copy of the transcript of the hearing be prepared. the transcript was prepared by Ms. Hunt and sent to Respondent, along with a bill for $153.00 on July 3,1989.

Respondent then advised his client, Mr. Gavin, of the amount due Ms. Hunt for the transcript and collected $150.00 in cash from Mr. Gavin to pay for this transcript on July 12, 1989. Respondent told Mr. Gavin that he would add the extra $3.00 to pay Ms. Hunt himself.

From that day until the present, Respondent has failed to forward the sum received from Mr. Gavin, with or without the additional $3.00, to Ms. Hunt. Accordingly, she sent additional bills to Respondent after three months and "a month or two later" as was her normal practice when payment is not

received following the first billing.

On March 29, 1990, Ms. Hunt sent a letter to Mr. Gavin advising him that the bill was still unpaid and asking for his "prompt attention" to the matter.

At a Referee's hearing on Mr. Gavin's Worker's Compensation claim held on May 4, 1990, Mr. Gavin advised Ms. Hunt that he had already paid Respondent for the transcript and he showed her a copy of his receipt fro Respondent. (PE-3) In passing, it should be noted that Respondent did not attend that hearing.

After the hearing on May 4, 1990, Mr. Gavin went to Respondent's Pittsburgh office to discuss Respondent's failure to pay Ms. Hunt's bill. Respondent was unavailable on that date so Mr. Gavin left a copy of Ms. Hunt's letter on which he (Gavin) had handwritten a request that Respondent pay Ms. Hunt the $150.00 that he (Gavin) had given to Respondent to pay for the June 1, 1989 transcript. (PE-3)

On May 15, 1990 Ms Hunt again wrote to Respondent stating that she had been shown a receipt for payment by Mr. Gavin and again requesting his "prompt attention" to the matter of payment.

On or about May 17, 1990, Mr. Gavin met respondent on the street and asked him to pay Ms. Hunt. Respondent called Ms. Hunt on the phone, in Mr. Gavin's presence, and promised her that he would pay the bill"as soon as possible."

Notwithstanding this chain of events, Respondent has not paid for the transcript to date. Also, Respondent has not returned the $150.00, to his client, Mr. Gavin.

Ms. Hunt sent additional statements to Respondent on June 29, 1990 and on August 1, 1990, neither of which bore any fruit. To this point, the matter was still relatively simple and uncomplicated and one conducive to easy resolution by reimbursement of the funds advance by the client to the client, or by payment of same, to the stenographer.

Taking into consideration that Respondent had previously received an informal admonition on November 9, 1992, and that - Respondent had held the funds for over five years, together with Respondent's failure to attend the hearing of March 18, 1994, which the Hearing committee properly viewed as conduct evincing a disrespect for the Hearing Committee as well as the entire disciplinary process, the Committee recommended that Respondent be publicly censured by the Supreme Court of Pennsylvania.

It would be idle speculation to conjecture as to whether the Board, upon review of the record as it then existed, would have agreed with the recommendation of the Committee or something more or less severe, but the Board was not given the opportunity to simply review that record as, on October 11, 1994, Respondent, through his counsel, filed Exceptions and Brief in support of Exceptions. Respondent also requested oral argument at that time.

The Brief, consisting of some 34 pages along with a twelve page Affidavit from Respondent, occasionally addresses the primary issue, i.e., the $150.00 in cash paid to Respondent for a transcript and held by Respondent for these may years, but, for the most part, consists of a vitriolic diatribe directed at Disciplinary Counsel, the Board and Charles Gavin.

The Brief begins by averring a "stated policy of racial discrimination against Respondent, an African-American attorney, continues with irrelevant allegations of theft of $3,000.00 from Respondent's bank account by "a white lawyer" and continues throughout assigning blame for Respondent's disciplinary problems to "Racial Harassment and Politics." Needless to say, except for the unsupported and scurrilous accusations in the Brief no evidence, of any kind, exists in the Record of this matter to even suggest that such accusations have any basis in fact.

Pursuant to Respondent's request for oral argument, a Panel of the Disciplinary Board was convened and heard Oral Argument on this matter on December 15, 1994. Counsel for Respondent submitted argument essentially along the lines of the Brief submitted. On December 16, 1994 the matter was adjudicated by the Disciplinary Board.

In determination of this matter the Board considered the following: The principle function of the Disciplinary System is to "protect the public from unfit lawyers and to maintain the integrity of the legal system" Office of Disciplinary Counsel v. Keeler, 509 Pa. 573, 506 A.2d 872 (1986).

The Board is required to assess the nature and extent of Respondent's misconduct and to recommend appropriate sanctions. Office of Disciplinary Counsel v. Lucarina, 504 Pa. 217, 472 A.2d 186 (1983).

Petitioner bears the burden of proving violations of the Rules of Professional Conduct by clear and convincing evidence. In Re Anonymous No. 24 DB 89, 8D&C 4th 207, 216 (1990).

After reviewing the hearing transcripts, the report of the Hearing Committee and the Brief submitted, with oral argument by Respondent's counsel, the Board concludes that the Petitioner has met its burden.

The very fact that Respondent received the sum of $150.00 on July 12, 1989 specifically for the purpose of paying for a stenographic transcript and, to this date, has neither paid for the transcript nor reimbursed the money to his client, from whom he received it, establishes satisfactorily violation of RPC 1.3.

Violation of RPC 1.15(b) is established by Respondent's failure to promptly notify the stenographer, Ms. Hunt, of his receipt of the said funds and his further failure to promptly deliver the funds to her.

Respondent's retention of the funds from July 12, 1989, to date, satisfies the Board that he has violated RPC 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or

misrepresentation.

Respondent's misconduct is egregious. The record reveals a pattern of lies and denial culmination in a belated, spurious defense in this matter and at least one baseless law suit in another forum.

The Hearing Committee has recommended that Respondent be publicly censured. The Board agrees that Respondent must be severely sanctioned but, in view of all that has taken place since the Committee conducted its hearing, we are of the view that a period of suspension is the appropriate disposition.

In determining the appropriate period of suspension, the Board looks to Respondent's misconduct as well as any mitigation or aggravating factors. His attitude towards the disciplinary process appears to be consistent with the manner in which he handled the underlying case and the funds which are the subject of the present Petition. Respondent failed to appear at the hearing of March 18, 1994 before the Hearing Committee. He further fails to present testimony and/or cross examine witnesses at the first hearing and failed to avail himself of the opportunity to ask for a further hearing or present a defense during the time granted by the Hearing Committee following the initial hearing.

Instead of addressing the very simple matter of why he did not either pay the stenographic costs or reimburse the client, Respondent chose instead to file a Petition for

Extraordinary Relief alleging a "bad faith prosecution" with no evidence upon which to sustain such a claim and later filed an apparently groundless complaint in the United States District Court, which Complaint was dismissed by the Court.

Accordingly, after reviewing Respondent's egregious conduct, this Board is of the Opinion that Respondent is not presently fit to continue the practice of law in this Commonwealth. This Respondent's attitude and behavior denigrated the integrity of the Bar and demonstrated that he is an unfit and reckless practitioner from whom the public deserves protection. In Re Anonymous No. 40 DB 91, 21 D&C 4th 484 (1993). In addition, we believe that to properly protect the public, Respondent should be required to apply for Reinstatement so that the Board of the Court may be confident that he meets the criteria set forth in Office of Disciplinary Counsel v. Lewis, 493 Pa. 519, 527-28, 426 A. 2d 1138, 1142 (1981) where the Court said inter alia,"a client must be able to look to his attorney of sound advice."

Respondent's conduct throughout this entire odyssey, to date, brings into serious question whether he con be expected to provide sound advice. In this uncomplicated matter, susceptible to prompt and honorable resolution, he chose instead to literally, in the vernacular, "make a Federal case of it" thus denigrating himself, his profession and the entire disciplinary process to the detriment of all.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania respectfully recommends to your Honorable Court the Respondent, MATTHEW E. JACKSON, JR., be suspended from the practice of law for one (1) year and one (1) day.

It is further recommended that the Court direct tat Respondent pay all of the necessary expenses incurred in the investigation and processing of this matter pursuant to Rule 208(g) of the Pennsylvania rules of Disciplinary Enforcement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

By: Signed
Alfred Marroletti, Member
Date: July 27, 1995

Mr. Leonard and Mr. Saltz dissent and would recommend a Public Censure.

Mr. Kerns did not participate in the adjudication of this matter.

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